

On June 29, 2006 appellant, then a 51-year-old distribution clerk, file a traumatic injury claim (Form CA-1) alleging that she sustained a torn right rotator cuff on July 16, 2003. She submitted a supervisory statement and two coworker statements recalling her complaints of right

shoulder pain, in particular after a December 19, 2003 lifting incident. Following intermittent absences, appellant elected disability retirement effective October 19, 2005.

In a June 25, 2006 report, Dr. Nadiene Haynes, an attending Board-certified family practitioner, opined that appellant sustained a right rotator cuff tear in July 2003 and December 2003, when lifting trays of mail.

In a July 7, 2006 letter, the Office advised appellant of the additional evidence needed to establish her claim, including an explanation as to why she did not report the injury within 30 days and submit treatment records contemporaneous to the injury. Appellant did not submit additional evidence prior to August 11, 2006.

By decision dated August 11, 2006, the Office denied appellant's claim on the grounds that the fact of injury was not established. It found that appellant failed to establish that the July 16, 2003 injury occurred at the time, place and in the manner alleged.

In an August 5, 2007 letter, appellant requested reconsideration. She submitted a September 11, 2007 letter from her supervisor stating that she reported a right shoulder injury on the claimed date. Appellant also submitted additional medical evidence.<sup>1</sup>

Dr. Haynes and Dr. Jerome Ciullo, an attending Board-certified orthopedic surgeon, held appellant off work for intermittent periods beginning in August 2003. In a December 7, 2004 report, Dr. Ciullo related appellant's account of feeling a pop in her right shoulder while lifting mail in July and December 2003. He diagnosed a torn right rotator cuff. On August 17, 2006 Dr. Ciullo diagnosed bilateral acromioclavicular joint arthritis. He commented that appellant sustained a traumatic right shoulder injury.

In May 10, 2005 and August 7, 2007 reports, Dr. Thomas Bryan, a Board-certified internist and rheumatologist, diagnosed osteoarthritic changes of the right shoulder. He opined that lifting trays of mail on July 16 and December 19, 2003 was competent to cause the diagnosed right rotator cuff tear.

By decision dated October 10, 2007, the Office accepted the July 16, 2003 incident but denied the claim as casual relationship was not established. It found that appellant submitted insufficient medical evidence explaining how and why the July 16, 2003 incident caused the claimed rotator cuff tear.

In an October 3, 2008 letter, appellant requested reconsideration. She contended that the medical record was sufficient to establish her claim. Appellant stated that she would submit an

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<sup>1</sup> Appellant provided May 11, 2004 and July 5, 2006 imaging reports. These reports do not address causal relationship. She also submitted August 13, 2003 and May 24, 2004 medical reports without an identifiable signature. Therefore, these documents do not constitute probative medical evidence for the purposes of this case. *Vickey C. Randall*, 51 ECAB 357 (2000). Appellant also submitted an October 19, 2005 letter from Office of Personnel Management (OPM) approving her application for disability retirement. The determinations of other administrative agencies regarding disability are not relevant under the Federal Employees' Compensation Act, as different criteria are used and the relationship to factors of federal employment is often not at issue. *Daniel Deparini*, 44 ECAB 657 (1993).

additional report from Dr. Ciullo discussing causal relationship. She provided a July 2008 attorney authorization form. Appellant also submitted two September 30, 2008 physical therapy prescription forms from Dr. Ciullo and October 17, 2008 outpatient surgery patient instruction forms.

In an October 29, 2008 letter, the Office afforded appellant 20 days in which to submit additional evidence pursuant to her October 3, 2008 request for reconsideration. Appellant did not submit additional evidence.

By decision dated November 20, 2008, the Office denied appellant's request for reconsideration on the grounds that her October 3, 2008 letter did not contain relevant evidence sufficient to warrant a merit review of the prior decision. It found that although, appellant stated that she would submit an additional report from Dr. Ciullo discussing causal relationship, she did not submit such evidence.

### **LEGAL PRECEDENT**

To require the Office to reopen a case for merit review under section 8128(a) of the Act,<sup>2</sup> section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.<sup>5</sup> The claimant need only submit relevant, pertinent evidence not previously considered by the Office.<sup>6</sup> When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.<sup>7</sup>

### **ANALYSIS**

The Office denied appellant's traumatic injury claim on October 10, 2007. Appellant requested reconsideration on October 3, 2008, based on medical evidence previously submitted.

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<sup>2</sup> 5 U.S.C. § 8128(a).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2).

<sup>4</sup> *Id.* at § 10.608(b). See also *T.E.*, 59 ECAB \_\_\_\_ (Docket No. 07-2227, issued March 19, 2008).

<sup>5</sup> *Helen E. Tschantz*, 39 ECAB 1382 (1988).

<sup>6</sup> See 20 C.F.R. § 10.606(b)(3). See also *Mark H. Dever*, 53 ECAB 710 (2002).

<sup>7</sup> *Annette Louise*, 54 ECAB 783 (2003).

She stated that she would submit a new report from Dr. Ciullo, an attending Board-certified orthopedic surgeon, discussing causal relationship.

The underlying issue at the time of the most recent merit decision was the causal relationship of the claimed right shoulder injury to the accepted July 16, 2003 lifting incident. To be relevant, the evidence submitted in support of the October 3, 2008 request for reconsideration must address that issue.

In support of her reconsideration request, appellant submitted a July 2008 attorney authorization form, two physical therapy prescription forms from Dr. Ciullo and outpatient surgery patient instructions. These documents did not contain relevant, pertinent evidence regarding the causal relationship of the claimed right rotator cuff tear to the July 2003 incident. Therefore, they are insufficient to require the Office to reopen appellant's claim for consideration of the merits.<sup>8</sup>

Appellant has not established that the Office improperly refused to reopen her claim for a review of the merits under section 8128(a) of the Act. She did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence.

On appeal, appellant asserts that the Office's November 20, 2008 decision denying reconsideration was contrary to the facts and the law. As noted, she did not submit relevant, pertinent evidence accompanying her request for reconsideration. Therefore, the November 20, 2008 decision denying appellant's request for a merit review was proper under the law and the facts of this case.

### **CONCLUSION**

The Board finds that the Office properly denied appellant's request for a merit review.

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<sup>8</sup> *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 20, 2008 is affirmed.

Issued: October 26, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board